

HONORABLE JAMES L. ROBERT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

VIVENDI S.A. and VIVENDI HOLDING I CORP.)

Plaintiffs,)

v.)

T-MOBILE USA, INC., T-MOBILE
DEUTSCHLAND GMBH, T-MOBILE
INTERNATIONAL AG, DEUTSCHE TELEKOM
AG, AND ZYGMUNT SOLORZ-ZAK,)

Defendants.)

NO. CV6-1524 JLR

DECLARATION OF WOJCIECH
KOZLOWSKI

I, Wojciech Kozłowski, depose and say upon my own personal knowledge as follows:

1. On 17 July 2007 I submitted a declaration in support of the Third Amended Complaint brought before the United States District Court, Western District of Washington, Seattle, by the Plaintiffs, Vivendi S.A. and Vivendi Holding I Corp. (hereinafter, the "Plaintiffs") against T-Mobile U.S.A. Inc., T-Mobile Deutschland G.m.b.H., T-Mobile International A.G., Deutsche Telekom A.G. and Zygmunt Solorz-Żak (hereinafter, the "Defendants"), and against the Defendants' Motion to Dismiss. I hereby submit this declaration as my

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1 reply to the declaration filed on 19 December 2007 by Professor Wojciech Popiolek on
 2 behalf and in support of the Defendants.

3
 4 **I. JURISDICTION OF POLISH COURTS: ARTICLE 1103 OF CCP**

- 5 2. In his opinion, Prof. Popiolek indicates Article 1103 of the CCP as the legal basis of
 6 personal jurisdiction of Polish courts over non-Polish entities and explains that pursuant to
 7 that Article, "Polish courts have jurisdiction over any tortfeasor who is alleged to have
 8 carried out a tort on Polish territory".¹ This statement calls for a correction.

9
 10 **I.1 Possible links allowing the Polish court to claim jurisdiction over T-Mobile U.S.A.**
 11

- 12 3. I agree that Article 1103 should be applied by the Polish court to establish if it has
 13 jurisdiction to hear the case where T-Mobile USA is named a defendant. Specifically, the
 14 court should apply Article 1103(3) which reads as follows: "Actions other than actions
 15 named in the preceding title hereof [which title refers to cases where Polish courts,
 16 according to Polish law, enjoy exclusive subject matter jurisdiction, and which is not
 17 applicable to the case at issue] which are to reviewed by trial, are subject to domestic [i.e.,
 18 Polish] jurisdiction, if ... the action pertains to ... an obligation that has arisen or is to be
 19 executed in Poland." (emphasis added). Hence, there are two subject matter connections
 20 which may allow the court to establish its jurisdiction over T-Mobile U.S.: (i) the place
 21 where the obligation was to be executed; OR (ii) the place where the obligation
 22 "originated".
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1 4. The place of execution of a claim (*locus executionis*) is characteristic for contractual
2 relationships and generally does not apply to tort claims. Even if one was to accept that this
3 link can in fact be applied by the court to the obligation to redress arising from the
4 defendant's alleged liability in tort, the place where such obligation should be executed is
5 determined by default rules of the applicable substantive law. Should the court decide, for
6 example, that defendants' liability in tort is governed by Polish substantive law, then,
7 provided that the remedy awarded by the court would be money, the place of execution of
8 the obligation to pay would be in the country where the plaintiff has his registered seat
9 (Article 454 of the Polish Civil Code). To my knowledge, none of the Plaintiff's has his
10 registered seat in Poland, therefore, assuming that the link of *locus executionis* is applicable
11 to tort claims, which I doubt, its application would not allow the court to find that it has
12 jurisdiction to hear the case against T-Mobile U.S.
13

14
15 5. The second, and last, possible colligation which the court in Poland would need to consider
16 is whether the claim of plaintiffs arising from the alleged racketeering activity of
17 defendants originated in Poland. Again, to answer that question, the court needs to decide
18 first which substantive law governs the obligation of the tortfeasor to make good the
19 damage caused to the harmed party, because that law would decide when the obligation
20 arises.
21

22 6. Therefore, the court in Poland, in order to decide the procedural issue of whether it has
23 jurisdiction over T-Mobile U.S., would need first to determine which substantive law is
24

25 (...continued)

¹ See Popiołek's Reply Decl., § 3.

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1 applicable to the claim of the Plaintiffs. By application of that law the court would be able
2 to determine if the obligation "has arisen" in Poland.

- 3 7. It follows that the proposition that Polish courts would have jurisdiction over a tort case if
4 only "any tortfeasor is alleged to have carried out a tort on Polish territory" is too hasty,
5 since it tacitly assumes that the fact of "carrying out" a tort in Poland according to the
6 substantive law governing the Plaintiffs' claim vis-à-vis the Defendants should imply that
7 such claim "has arisen" in Poland.
8

9 **1.2 Substantive law applicable to the Plaintiff's claim, as recognized by Polish law**
10

- 11 8. I agree that criteria for finding the law which the Polish law recognizes as applicable to the
12 obligations which do not arise out of legal acts, such as obligations having its source in tort,
13 are indicated in Article 31 § 1 of the Polish Private International Law. The cited paragraph,
14 somewhat similarly to Article 1103(3) of the CCP, points to law of the country in which
15 "the event being the source of the obligation had occurred".
16

- 17 9. Professor Popiolek maintains that the cited article 31 § 1 of the Polish Private International
18 Law "does not give clear priority to the law of the state where the tort has been committed,
19 as opposed to the law of the state where the damage occurred."² and that "prevalent
20 opinion" suggests that if "the tort is connected with many territories, the judge should be
21 given freedom to determine the applicable law according to the circumstances of the
22 particular case". What Professor Popiolek is really saying, is that in the causal chain giving
23 rise to a claim, Polish private international law gives deference only, or primarily, to the
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1 last link, i.e., the fact that the damage that the plaintiff wants redressed did occur. However,
 2 it is not what the law says. The quoted paragraph points to the law of the country in which
 3 "the event being the source of the obligation had occurred".

4 10. The expression "the source of obligation" has a specific legal meaning. Polish civil law,
 5 like any other civil law, traditionally distinguishes between obligations which have their
 6 source in contract and those to which tort is source.³ Perhaps this legal meaning could be
 7 best conveyed by saying that in many of its decisions the Polish Supreme Court, when
 8 pointing to the "source of the obligation" which is considered within the case, means the
 9 tort causing the damage giving rise to the defendant's liability rather than the damage
 10 itself.⁴ It is, therefore, fallacious to say, as Professor Popiolek seems to do, that article 31 §
 11 1 of the Polish Private International Law refers to the country where the damage occurred
 12 rather than the country where the tort was committed.

13
 14
 15 11. It is true that the discussed Article 31 § 3 is worded in an open way. Therefore, I am aware
 16 of some legal theories -- to which Professor Popiolek apparently refers to as the "prevalent
 17 opinion" -- which insist that in the event where tort and damage resulting from it are
 18 connection to many territories Article 31 § 1 should be interpreted in such a way so as to
 19

20 (...continued)

21 ² See Popiolek's Reply Decl., § 6.

22 ³ The other categories, which are not relevant here, but which should be mentioned to better explain the language of Article 31 §
 23 1 of the Polish private international law, according to Polish jurisprudence, encompass the obligations which have their source in
 unjust enrichment and the ones which originate directly from law. See, e.g., decision of the Polish Supreme Court of July 11,
 2002 in case no. IV CKN 1060/00.

24 ⁴ See, e.g., resolution of the Polish Supreme Court of March 3, 2004 in case no. III CZP 2/04; decision of the Polish Supreme
 25 Court of April 13, 2006 in case no. IV KK 40/06; decision of the Polish Supreme Court of December 19, 2003 in case no. III CK
 155/02; decision of the Polish Supreme Court of July 11, 2002 in case no. IV CKN 1060/00; decision of the Polish Supreme
 Court of July 9, 2000 in case no. IV CKN 1159/00, etc.

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1 allow the judge to select one of potentially applicable laws. What Professor Popiolek does
2 not mention, however, is that even those controversial theories do not contend that the
3 judge should have full discretion in choosing the law, but rather, that he should apply the
4 law which is in the closest relation to the obligation giving rise to the plaintiff's claim. To
5 establish that an act of racketeering committed by defendants from Germany, the United
6 States and Poland against the Plaintiffs having their respective seats in France and the
7 United States has the most tight relation with Polish law would require, in my opinion,
8 more than just the fact that the shares of Polska Telefonia Cyfrowa Sp. z o.o. (PTC) are
9 shares of a Polish company. After all, if a Russian citizen stole a Toyota from a Polish
10 citizen, nobody would argue that the case should be litigated in Japan.

- 11
12 12. To the extent that I am informed about the facts of the case, and as far as Polish private
13 international law is concerned, I would venture the opinion that the applicable law is either
14 law of the United States (because this is where I understand the act racketeering is allege to
15 have taken place) or the Republic of Austria (because the proceedings before the Vienna
16 Arbitral Tribunal were of pivotal importance for the control of PTC being taken over by the
17 Defendants and their affiliates), rather than Poland.

18
19
20 **I.3 Jurisdiction of Polish courts under assumption that Polish law governs**

- 21 13. Assuming that the Polish court decides that the claim of the Plaintiffs and the obligation of
22 the Defendants take source in an event (i.e., tort) which occurred in Poland and, thus, that
23 Polish substantive law should apply in the case (which is far from certain, but still not quite
24 improbable), the court would need to establish whether the obligation itself "has arisen" in
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1 Poland. According to Polish civil law, the claim of the Plaintiffs arises out of the damage
 2 allegedly caused to them by the Defendants. Therefore, the obligation of the Defendants
 3 could be said to have arisen in Poland only if the court asserts that the damage was done in
 4 Poland.

5 14. Again, this is far from clear where the damage took place. Surely the reason for the damage
 6 was the assumption of control over PTC by the companies from T-Mobile group. But, to
 7 my best knowledge, neither Vivendi S.A. nor Vivendi Holding I Corp. holds or held shares
 8 in PTC; the shares were controlled by another Polish company which in turn was controlled
 9 by Vivendi S.A. which in turn is controlling Vivendi Holding I Corp. According to Polish
 10 law, an argument could be made that in the chain of causality, the damage to Vivendi was
 11 caused by the loss of control over the PTC shares *by* the subsidiary directly controlling the
 12 shares, OR by the loss of value of shares *in* the subsidiary directly controlled by Vivendi,
 13 because of the loss of the value of the shares of the company who lost control over PTC
 14 shares. The difference is clear: in case the first theory is accepted, the damage to Vivendi
 15 took place in Poland; in the second instance, it occurred in France.

16 15. Therefore, to find that "T-Mobile USA could be sued in the Polish courts, because the tort,
 17 or at least a part of the defendants' activity, is alleged to have been carried out on Polish
 18 territory",⁵ as Professor Popiolek did, is a *non sequitur*. Although such an eventuality may
 19 not be excluded completely, it is not sure either. Moreover, in my opinion it would require
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25 ⁵ See Popiolek's Reply Decl., § 4.

1 a significant amount of determination from the court to – through a multi-level legal
 2 reasoning – assume jurisdiction over T-Mobile U.S.A.

3
 4 **I.4 Jurisdiction of Polish courts must arise from proven facts**

- 5 16. Professor Popiołek's view that T-Mobile USA could be sued in the Polish courts, because
 6 the tort "is alleged to have been carried out on Polish territory" is misleading, because it
 7 implies that the court's jurisdiction over the defendant depends on the facts alleged by the
 8 plaintiff. Should it really be the case, it would suffice for any plaintiff to merely allege that
 9 there exist any link between his claim and the territory of Poland which the CCP should
 10 recognizes as a basis for Polish jurisdiction. Even if disproved in the course of the case,
 11 Polish court would retain its jurisdiction because of the *perpetuatio fori* principle,
 12 expressed in Article 1097 of the CCP (which provides that the domestic jurisdiction
 13 existing at the commencement of the proceeding continues, even when the ground thereto
 14 ceases to exist in the course of the case being reviewed).
 15
 16 17. In reality, allegation of the fact never justifies territorial jurisdiction of Polish courts. Polish
 17 courts may adjudicate the case only if the factual circumstance recognized as basis for their
 18 jurisdiction is proven to actually take place. In the event the circumstance relevant for
 19 jurisdiction is disproved or remains unproved, the claim must be dismissed or, if already
 20 concluded by a decision, the decision must be vacated on the ground of nullity of the
 21 previously completed proceeding.⁶
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 25 ⁶ See decision of the Polish Supreme Court of August 27, 1982 in case no. II 214/82 and decision of the Polish Supreme Court of
 February 27 1979 in case no. III CRN 306/79.

1 18. However, it should be noted that onus regarding the fact which justifies jurisdiction of
2 Polish courts is on the plaintiff. Therefore, if T-Mobile U.S.A. brings up the defense of the
3 *forum non conveniens*, which I imagine it would, were the case ever to be filed in a Polish
4 court, the Plaintiffs would be required to make a persuasive argument against themselves,
5 i.e., convince the Polish court that in fact T-Mobile U.S.A. is subject to the court's
6 jurisdiction. The court is not deemed to have jurisdiction over a defendant with its seat
7 abroad unless and until proven otherwise; the opposite is true: the court does not have
8 jurisdiction over a defendant with its seat abroad as long as not proven to have it. In a
9 doubtful case, and certainly this case is doubtful, the defendant would receive the benefit of
10 the court's doubt, i.e. in my opinion the motion to dismiss on the grounds of lack of
11 jurisdiction would be granted.
12

13 19. Polish judges are not elected, but appointed for life by the President. However, a judge's
14 rise in the judicial hierarchy depends mainly on how his work is perceived by the judges of
15 higher courts. At the same time, Polish judiciary is governed by bureaucracy; one of many
16 forms of that bureaucracy are court statistics, which decide about the evaluation of the
17 whole court and individual judges, thus influencing the judge's chances for a raise or
18 promotion. A high number of the cases disposed of is a reason for pride, whereas a high
19 number of protracted proceedings is bad news. Apart from efficiency, another very
20 important factor taken into account when evaluating a judge is quality of his decision-
21 making, measured by the number of cases that have been reversed or modified. A decision
22 which is changed or reversed on appeal happens to every judge; after all, some points of
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1 law are controversial and the court of appeals enjoys the privilege of the last word in such
 2 cases. However, what judges believe should not happen is to have a decision vacated
 3 because of nullity of the proceeding. Nullity can happen only in the rare cases where the
 4 proceedings were touched by a qualified defect, a perversion of justice.⁷ Deciding a case
 5 without having a jurisdiction is one of those qualified defects. Therefore, no reasonable
 6 judge would take a risk of extending the court's jurisdiction over a party whose status is
 7 seriously in doubt. On the other hand, a case dismissed on a motion to dismiss on the
 8 grounds of lack of jurisdiction is a case disposed of, just like a case decided after a few
 9 years of a tiresome trial, only without the risk of protraction. Therefore, every reasonable
 10 judge would dismiss the case when the defense of the *forum non conveniens* is raised and
 11 the decision has a good chance to stand after appellate review.
 12

13
 14 20. Therefore, I assess the chances that a Polish court accepts the case at issue as remote.
 15

16 **II. SUITABILITY OF POLISH CIVIL PROCEDURE FOR PROVING CONSPIRACY**

17 21. Professor Popiolek maintains that, although undeniably different from its American
 18 equivalent, Polish Civil Procedure can effectively be used in order to prove conspiracy in a
 19 tort dispute.⁸ I respectfully disagree with Professor Popiolek.
 20

21 22. It is my understanding that what is relevant here is not only a theoretical existence of a
 22 remedy or tools to prove that such remedy should be granted, but its real availability. In
 23

24 ⁷ For example, deciding a case despite *res iudicata*, or party's nonexistence; deciding in violation of the party's right of due
 process or the right to counsel, etc.

25 ⁸ See Popiolek's Reply Decl., § 8.

1 other words, apart from "the law on the books" it is also relevant how the "law in action"
 2 looks like. If this understanding is correct, I would like to point out several issues which I
 3 find relevant for evaluation of suitability of the Polish civil procedure for the complex
 4 cases, such as those brought under RICO rules.

6 **II.1 Generally: procedure is not stable**

7 23. I would like to observe that one of the basic conditions allowing for an effective control of
 8 litigation, especially in the role of plaintiff, is stability of the system. Since the beginning of
 9 the year 2000, the CCP was changed by exactly **ninety-six** amending bills,⁹ out of which c.
 10 **twenty** should be classified as introducing general amendments of material importance to
 11 the procedure as a whole. Whereas in case of the substantive law the principle of *lex retro*
 12 *non agit* is prevalent, it is generally not the case for the amendments of the procedure.¹⁰
 13 Needless to say, a sudden change of procedural standards can frustrate any litigation
 14 strategy, and the chances for that are the greater, the more complex the case.

15 24. Therefore, I am of the opinion that the Polish civil procedure is not suitable for any
 16 complex and predictably long litigation, such as the case at issue seem to be.

19 **II.2 Generally: judiciary and procedure unfit for complex litigation**

21
 22
 23 ⁹ See the list of amended bills appended hereto.

24 ¹⁰ The most famous incident pertained to the amendment of formal requirements for the writ of extraordinary appeal (which is a
 25 petition for review of a given case by the Supreme Court). The Supreme Court for formal grounds denied *certiorari* to hundreds
 of claimants who failed to comply with the newly introduced rules, even though they came into force *after* the writ was filed, but
before its review by the Court.

1 25. Prof. Popiolek observes that the Polish procedure gives a more active role to a judge. This
2 is only partially true.

3 26. In December of 2007, a Global Class Actions Conference was held at the Centre for Socio-
4 Legal Studies of the Oxford University in cooperation with the Stanford Law School.
5 Poland was represented by dr. Magdalena Sengayen, affiliated with Oxford University. In
6 her report about the state of the Polish system of justice, the author states:
7

8 *"A significant problem was noted by academic writers in the attitudes of the judiciary (lower levels of*
9 *judiciary in particular): lack of confidence and flexibility in interpreting the plethora of new laws and*
10 *even the old laws in the new reality. Another is the lack of confidence of ordinary citizens in the*
11 *justice system. An effective and efficient justice system requires well-resourced courts, as well as good*
12 *quality judges commanding public respect, and the situation is still not satisfactory in Poland. Group*
13 *litigation, which entails greater judicial control of litigation including wide judicial discretion to*
14 *make management decisions, may be problematic to conduct in these conditions."*¹¹

15 *"The Code of Civil Procedure is still seen by the judiciary and academics as overly formalistic, and*
16 *civil procedure as very complex and inaccessible."*¹²

17 *"In Polish court practice ... the role of the judge is often seen as being one of a passive observer in a*
18 *purely adversarial procedure. ... At present, judges were observed to sometimes avoid taking*
19 *initiative in the course of the proceedings, to steer clear from encouraging settlement between parties,*
20 *or from simplifying, shortening proceedings. The impression of some scholars is also that in even the*
21 *simplest of matters the judges refuse to take a decision based upon their own common sense,*
22 *experience and opinion, and refer to experts for their views. ... In some way relieved of their duty to*

23
24 ¹¹ See Magdalena Sengayen, *National Report for the Global Class Actions Conference at the Centre for Socio-Legal Studies,*
25 *Oxford University, December 2007. Poland - legal system in transition* [hereinafter, "Report"], available
at: http://www.law.stanford.edu/display/images/dynamic/events_media/Poland_National_Report.pdf, at 6.

1 actively lead the proceedings, the judges are not willing to risk taking initiative in making many vital
 2 decisions during the proceedings – even the simplest and most obvious facts often require
 3 confirmation by experts. This leads to increased costs and length of civil proceedings ... This
 4 approach makes judicial case management and case control, so crucial in managing group litigation,
 5 very difficult.

6 Overall, what is striking about the Polish court procedure is its length, often disproportionate to the
 7 degree of complexity of the issues involved, let alone the value of the case."¹³

8 **II.3 No tools for effective case management**

9
 10 27. It is my understanding that in the United States a judge has a broad discretion in managing
 11 the case. For example, to my modest knowledge of the subject, Rule 16 of the Federal
 12 Rules of Civil Procedure authorizes the court to require the parties to participate in a
 13 pretrial conference to consider the orderly administration of the case. Even if a judge does
 14 not take the initiative to set the conference, a party who perceives a need to organize the
 15 schedule of pretrial actions and commit his opponent to court-ordered deadlines can obtain
 16 assistance from the court.
 17

18 28. Under Articles 207 and 208 of the Polish CCP, the court may undertake certain preparatory
 19 actions before the first hearing. In particular, she can order that the defendant file a reply to
 20 the statement of claims and that parties exchange further communications (Article 207 § 2
 21 of the CCP); she can issue a subpoena ordering attendance of parties, witnesses and expert
 22 witnesses to be heard during the trial (Article 208 §1.1, 3 and 4); she can order production
 23

24 (continued)
 25 ¹² Id. at 8.

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1 of documents from a third party (Article 208 § 1.2). However, except from the order that
2 the defendant file a reply and that counsels be present at the hearing, rarely does the court
3 exercise its powers.

4 29. Further, I understand that during pretrial conference(s), which may even take the form of a
5 conference call, the court and the attorneys have a chance to discuss such procedural issues
6 as they see important for the case (service; jurisdiction; schedule for discovery;
7 consolidation or separation; joinder; etc.).

8
9 30. In the practice of Polish courts it is unimaginable that a judge calls parties or their
10 attorneys. It is also not practiced (although procedurally conceivable) that a judge sets an
11 informal meeting with the counsels to both parties to discuss the course of the proceedings
12 in advance. On the contrary, such issues are usually discussed not earlier than during the
13 first hearing (although it is quite often that parties raise formal defenses and objections in
14 writing before).

15
16 31. I also believe that under the Federal Rules of Civil Procedure in complex cases the judge,
17 either by himself or in coordination with parties, formulates a discovery plan and schedules
18 dates for evidence motions and limits to the evidence collection.

19
20
21 32. Save for the lack of pre-trial discovery, in Poland no such thing as a schedule for evidence
22 collection exists. Evidence is collected quite spontaneously; it is not rare that witnesses
23

24
25 (...continued)
¹³ *Id.* at 34-37.

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1 called for one hearing must attend again, because a recess is ordered because of some
2 formal reasons or, because of clear schedule, the hearing time ends.

3
4 **II.4 No effective enforcement of court orders**

5 33. If court orders are to be respected, there must be effective incentives to ensure compliance.

6 Two primary sanctions for violations of pretrial orders have developed: first, dismissal of
7 the plaintiffs action for failure to prosecute, or default when the defendant is the violator,
8 and second, imposition of fines or taxing of costs caused by the disobedience.

9
10 34. Both types of the above sanctions exist also in Polish procedure. However, apart from
11 dismissal for failure to give evidence and default decisions issued when the defendant fails
12 to submit a reply when ordered *and* to appear on the first hearing without prior notice to the
13 court, enforcement of other orders is close to nonexistent.

14 35. In particular, if a third party fails to produce a document as per court's order, the court may
15 impose a fine up to PLN 1,000 (Articles 251 and 163 of the CCP).¹⁴ The fine may be
16 imposed only once and the court has no tool to forcefully take the relevant document away
17 from the third party who is in its possession. If the subpoenaed witness fails to appear, or
18 refuses to testify without a reason, the court may administer a fine up to PLN 1,000 and if
19 need be, impose the fine for the second time and order that the witness be forcefully
20 brought before the court (Article 274 § 1 and Article 276 § 2 of the CCP). However, if the
21 witness fined appears before the court within a week or at the closest hearing set by the
22 court, he can give reasons for his failure to appear as ordered, in which case the court may
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1 take back the fine (Article 275 of the CCP). In some extreme situations, for example, when
 2 a witness refuses to testify, the court may order that the witness be confined for a period not
 3 longer than one week (Article 276 § 2 of the CCP).

4 36. All of the above remedies are a good example of the "law on the books" that simply does
 5 not work. A fine in the amount of PLN 1,000 is not able to deter many violators in Poland. I
 6 can imagine that an officer of a company accused of a fraud and conspiracy, if faced with
 7 the alternative of giving testimony which could be potentially harmful for that company and
 8 paying less than \$400 would quickly ask for the bill. The same can be said of a party
 9 ordered to produce a document. Orders to forcibly bring a witness happen extremely rarely
 10 and would not be enforceable against witnesses residing permanently outside of Poland.
 11 Orders to arrest a witness never happen.

12
 13 37. Moreover, even when the "law on the books" is concerned, the court has no tools
 14 whatsoever to coerce production or testimony from a party on the motion of the adversary.
 15 If a party chooses not to produce, it simply cannot be punished otherwise than by
 16 displeasing the judge.
 17
 18

19 **II.5 Interlocutory appeals**

20 38. Polish procedure gives each party the right to appeal against many of the interlocutory
 21 decisions and orders of the court. For example, a party may appeal against: decision to
 22 grant or deny the motion to dismiss on the ground of lack of jurisdiction or other formal
 23

24 (...continued)

25 ¹⁴ 1 USD = c. 2.45 PLN.

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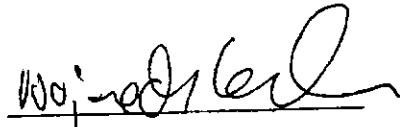
1 defenses; decision to deny the motion to exempt from costs; decision to deny the motion to
2 free counsel; decision to dismiss or to accept an opposition against permissive intervention;
3 order imposing fine or enforcing subpoena; decision to stay the proceedings or to
4 commence the proceedings previously stayed; decision to deny the motion to exclude a
5 judge; decision to refuse acceptance of an appeal (Article 394 of the CCP).

6
7 39. Most of the appeals, even if manifestly frivolous, stay the proceedings until such time that
8 the appeal is reviewed by the upper court. Therefore, many appeals are filed by a party who
9 has no real interest in winning the appeal, but aims to frustrate the trial. For example, an
10 affluent defendant may file a petition for exemption from costs or for a fee counsel. Such
11 motion would surely be denied, but it is appealable. A party who wishes to frustrate the
12 taking of evidence may ignore court's orders and appeal against each fine. Such
13 possibilities are plenty.

14
15 40. For the above reasons I continue to believe that, as stated in my previous declaration of July
16 17, 2007, Polish procedure is not suitable for proving a case based on alleged conspiracy.

17
18 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United
19 States of America that the foregoing is true and correct.

20
21
22 Executed this 17 day of January 2008.

23
24 
25 Wojciech Kozłowski, Mag. Jur.

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